

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 10-0157

STATE OF MONTANA,

PLAINTIFF AND RESPONDENT,

v.

JOEL MILES WHITE,

DEFENDANT AND APPELLANT,

FILED

APR 30 2010

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

---

BRIEF OF APPELLANT

---

ON APPEAL FROM THE MONTANA SIXTEENTH JUDICIAL DISTRICT COURT,  
ROSEBUD COUNTY, THE HONORABLE JOHN C. McKEON, PRESIDING

---

JOEL MILES WHITE #20229  
50 CROSSROADS DR.  
SHELBY, MT 59474

STEVE BULLOCK  
MONTANA ATTORNEY GENERAL  
215 NORTH SANDERS  
P.O. Bx. 201401  
HELENA, MT 59620-1401

MICHAEL HAYWORTH  
ROSEBUD COUNTY ATTORNEY  
P.O. Bx. 69  
FORSYTH, MT 59327

PRO-SE FOR DEFENDANT  
AND APPELLANT

ATTORNEY FOR PLAINTIFF  
AND RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUE.....	1
STATEMENT OF THE CASE/FACTS.....	1
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	3
I. STANDARD OF REVIEW.....	3
II. A SENTENCING COURT HAS THE AUTHORITY TO CORRECT AN ERROR IN A SENTENCE OR JUDGMENT....	3 4
III. DEPARTMENT OF CORRECTIONS HAS NO AUTHORITY TO MODIFY SENTENCE AS TO RESTITUTION..	4 5
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	6
<del>CER</del> IFICATE OF COMPLIANCE.....	7

TABLE OF AUTHORITIES

CASES

STATE v. SEALS 2007 MT 71, ¶7, 336 Mont. 416, 156 P.3d 15.....	3
---	---

OTHER AUTHORITY

MONTANA CODE ANNOTATED

§46-18-116 CORRECT ERRONEOUS SENTENCE.....	4
--	---

### STATEMENT OF THE ISSUES

1. Whether the District Court abused its discretion when it refused to correct a sentence that was imposed with specific stipulations and sanctions.

### STATEMENT OF THE CASE/FACTS

JOEL MILES WHITE, (WHITE) was first sentenced in this matter on January 24, 1994, for the offenses of Criminal Mischief, alleged to be a felony, and Assault, a felony (D.C. Doc 15.) The District Court sentenced him to ten years on each, consecutive, suspended upon terms and conditions to make payments for restitution and fines to the Clerk of District Court within a time frame of five years.

The Court revoked both suspended sentences on December 7, 2001, and sentenced White to ten years with eight years suspended on each, consecutive.

White began serving the collective sixteen year balance of the suspended sentences on February 6, 2002. The Court revoked his sentences again on February 29, 2003. This time the Court sentenced White to eight years with twenty-eight months suspended on the Criminal Mischief, and continued the eight years suspended on the Assault, again consecutive.

White discharged his jail term on June 25, 2005, and began serving the suspended portion of his sentences.

The next day he got into a fight with his brother-in-law, who aggressively "called him out". He took a pocket knife from his pocket, opened it, and began using it to protect himself. (D.C. Cause No. 05-601) swinging the knife at his assailant, White cut him in the throat region, severing his carotid artery and jugular vein, the assailant expired in a matter of minutes. (D.C. Cause No. 05-601: Tr. at 315, 728-29, 749-50.)

The State petitioned the District Court to revoke both suspended sentences on July 29, 2005, alleging that White violated the terms of the suspended sentence conditions requiring him to obey all laws and refrain from possessing a weapon. (D.C. Doc. 160.) at the revocation hearing, there was no mention of the five year term limit to pay restitution and fines. The Court proceeded to sentence White to a term of twenty-eight months with the Department of Corrections on the balance of the Criminal Mischief and eight years for the Felony Assault.

On the date of February 3, 2009, White received from the U.S. Treasury Trust for American Indians a check in the amount of \$991.33. At this time Crossroads Correctional Center accounting office removed the amount of \$165.21 for **restitution** on the restitution supposedly owed in DC 92-33.

White exhausted the grievance process and then submitted a Petition/Motion an "Order" Subject Jurisdiction Matter and Injunction Pursuant to Indian Tribal Judgment Funds use or Distribution Act, Under 25 U.S.C. § 1401 and 25 U.S.C. § 117 (a)-

117 (b).

### SUMMARY OF THE ARGUMENT

The District Court abused its discretion when it failed to assume its authority to rectify the sentence based on Contract Analysis that was implemented at time of sentencing. The Court has the authority to correct an illegal sentence or action when challenged while the defendant is serving it by imposing the statutorily authorized sentence. The Court acted arbitrarily or without the exercise of conscientious judgment when it failed to do so. Accordingly this sentence should be remanded and the matter appropriately determined judicially.

### ARGUMENT

#### I. STANDARD OF REVIEW

This Court reviews a criminal sentence for legality, determining whether it comports with statutory parameters. **STATE V. SEALS**, 2007 MT 71, ¶7, 336 Mont. 416, 156 P.3d 15. The dispute that exists here that White's original sentence sanctioned a five year term limit for payment of fines and restitution in a contract with the Court.

#### II. A SENTENCING COURT HAS AUTHORITY TO CORRECT A SENTENCE WHEN THE UNDER LYING SENTENCE WAS ILLEGAL AND IT IS CHALLENGED WHILE THE DEFENDANT IS SERVING THE SENTENCE.

Given our statutory scheme, it is apparent that a

sentencing court's authority to correct a criminal defendant's sentence based on the illegality depends upon when the illegal sentence is discovered and challenged. If the illegal action is challenged while the defendant is serving the [jail] sentence, the Court has the authority to correct the sentence by imposing a sentence that was statutorily authorized at the time defendant committed his or her offense and giving the defendant credit for time served. (Internal citations omitted.)

The question presented by the parties in Seals is whether a sentence in excess of statutory parameters is void ab initio or whether it is invalid only as to the excess. This court concluded the latter, and found that any term beyond that which is statutorily authorized is invalid only to the extent of excess. Seals ¶15. The rule is consistent with the language of § 46-18-116 in pertinent part as follows: District Court had authority under its power to correct clerical errors to issue post-judgment order amending written judgment of sentence.

### III. DEPARTMENT OF CORRECTIONS HAS NO AUTHORITY TO MODIFY SENTENCE AS TO RESTITUTION.

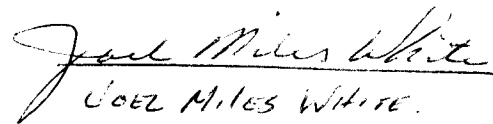
The defendant was ordered to pay costs for restitution and cost of his court appointed attorney within five (5) years. The District Court did not at any time file default on this

part of the judgment that is the responsibility of the county attorney or the court itself. Department of Corrections at a later date can not make modifications to a judgment that makes it an excessive sanction. Protocalls are put in place so that the presiding court may make the appropriate corrections and not the Department of Corrections.

### CONCLUSION

For the reasons stated herein, the sentence exceeds the parameters set out by the District Court and should be remanded for appropriate actions and take into account the unambiguous language of the **contract** between the **defendant** and **sentencing court**.

Respectfully submitted this 29 day of April, 2010.

  
JOEL MILES WHITE.



CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy  
of the foregoing Brief of Appellant to be mailed to;

STEVE BULLOCK  
MONTANA ATTORNEY GENERAL  
215 NORTH SANDERS  
P.O. Bx.201401  
HELENA, MT 59620-1401

MICHAEL HAYWORTH  
ROSEBUD COUNTY ATTORNEY  
P.O. Bx.69  
FORSYTH, MT 59327

Dated this day 29 of April, 2010.

*Paul Miles White*  
APPELLANT.

CERTIFICATE OF COMPLIANCE

This is to certify that the foregoing document complies with the M.R.APP. P to the best of the Petitioner's resented abilities.

Joel Miles White  
Joel Miles White.